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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,695	08/27/2003	Lei Huang	J6861(C)	3775
201 7590 01/16/2007 UNILEVER INTELLECTUAL PROPERTY GROUP 700 SYLVAN AVENUE, BLDG C2 SOUTH ENGLEWOOD CLIFFS, NJ 07632-3100			EXAMINER VENKAT, JYOTHSNA A	
			ART UNIT	PAPER NUMBER
			1615	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/16/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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Office Action Summary

Application No.

10/648,695

Applicant(s)

HUANG ET AL.

Examiner

JYOTHSNA A. VENKAT Ph. D

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 18-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 12/2/04 AND 8/27/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Receipt is acknowledged of election, supplemental IDS and IDS filed on 10/25/06; 12/2/04 and 8/27/03.

Election/Restrictions

Applicant's election with traverse of group I in the reply filed on 10/25/06 is acknowledged. The traversal is on the ground(s) that all claims of record can be examined without serious burden to the examiner. This is not found persuasive because restriction requirement between groups I-III is in compliance with MPEP 806.05 (h).

The requirement is still deemed proper and is therefore made FINAL.

Claims 18-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 10/25/06.

Claims 1-17 are pending in the application and the status of the application is as follows:

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. **This is written description requirement.**

Art Unit: 1615

This is a “written description” rejection, rather than an enablement rejection under 35 U.S.C. 112, first paragraph. *Vas-Cath Inc. V. Mahurka*, 19 USPQ2d 1111, states that applicant must convey with reasonable clarity to those skilled in the art that, as of the filing date sought; he or she was in possession of the invention. The invention, for purposes of the “written description” inquiry, is “*whatever is now claimed*” (see page 1117).

The description requirement of the patent statute requires a description of an invention, not an indication of a result that one might achieve if one made that invention. See *In re Wilder*, 736 F.2d 1516, 1521, 222 USPQ 369, 372-73 (Fed. Cir. 1984). Accordingly, describing a skin care cosmetic composition comprising ingredient (i) and ingredient (ii) containing block copolymer, which is poly (butadiene-b-ethylene oxide) and defining poly-butadiene having a molecular weight of about 1,000 to about 10,000 and poly-ethylene oxide chain having a molecular weight of about 1,000 to about 20,000 in the absence of knowledge as to what type of molecular weight is not a description of the copolymer. Applicant fails to adequately describe “molecular weight” of the copolymer and type of molecular weight of each monomer. There are different kinds of “molecular weights”. Most common are number average and weight average molecular weights. The others are peak average, viscosity average and Z average molecular weights. Polymers are made of many molecular chains, each having different chain lengths and thus different molecular weights. Specification fails to adequately describe the type of molecular weight.

Thus Claims employing component (ii) at the point of novelty, such as applicants’, neither provide those elements required to practice the inventions, nor “inform the public” during

Art Unit: 1615

the life of the patent of the limits of the monopoly asserted with respect to the type molecular weight of each monomer or the molecular weight of the diblock copolymer.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.


The recitation of molecular weight without specifying the type of molecular weight is indefinite. There are different kinds of “molecular weights”. Most common are number average and weight average molecular weights. The others are peak average, viscosity average and Z average molecular weights. Polymers are made of many molecular chains, each having different chain lengths and thus different molecular weights.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT Ph. D whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1615

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


JYOTHSNA A VENKAT Ph. D
Primary Examiner
Art Unit 1615
